In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 812

TRANSOCEAN AIR LINES, INC., JEPTHA P. MARCHANT, AND JOSEPH A. PERKINS, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioners Marchant and Perkins are lawyers who represented Transocean Airlines, Inc., in a Tucker Act suit brought against respondent in the United States District Court for the Southern District of Florida. They undertook the representation on the basis of a contingent fee arrangement giving them a one-third interest in any judgment obtained. Ultimately, after Transocean's right to recover had been

established by the Court of Appeals for the Fifth Circuit (Pet. App. A.17—A.49), Transocean was adjudged a bankrupt and its trustees stipulated settlement of the suit for $75,000 to be credited against the government's half-million dollars in claims against the estate. At petitioners' request, the district court then entered a judgment, on the basis of this settlement, awarding Transocean $75,000. It also entered an order granting petitioners a charging lien of one-third ($25,000) of the judgment. This order was affirmed by the court of appeals (Pet. App. A.9—A.16). When the district court entered judgment on the Fifth Circuit's mandate, however, it modified its earlier judgment and order by reducing Transocean's award to $50,000 and by converting petitioners' charging lien into a judgment directly against the United States in the amount of $25,000. On appeal, this action was reversed. The court below held that such a direct judgment is barred by the doctrine of sovereign immunity because the United States has not consented to the entry of a judgment against it in favor of the attorneys for a successful Tucker Act claimant. The court also held that the contingent fee arrangement, transferring an interest in a claim against the United States, violated the Anti-assignment Act, 31 U.S.C. 203, and was, for this additional reason, unenforceable. (Pet. App. A.1—A.8).

The Fifth Circuit's decision is plainly correct and there is no occasion for further review. In the Tucker Act, 28 U.S.C. 1346(a), Congress waived the sovereign immunity of the United States to the extent that Transocean might sue under its transportation

contracts with the United States. But neither in the Tucker Act nor elsewhere did Congress authorize the entry of a direct judgment against the United States for the attorneys' fees which Transocean obligated itself to pay by reason of its independent contract with Messrs. Marchant and Perkins. The United States was, of course, not a party to the contingent fee contract between Transocean and its lawyers; indeed, there was no legal relationship between the government and the petitioners. In these circumstances, the district court plainly exceeded its jurisdiction in entering a judgment against the United States in the lawyers' favor. Cf. *United States* v. *Sherwood*, 312 U.S. 584.

The alternative holding of the court below is also unexceptionable. The Anti-assignment Act (Pet. App. A.53—A.56) specifically provides that: "All transfers and assignments made of any claim upon the United States, or of any part or share thereof, or interest therein, whether absolute or conditional, and whatever may be the consideration therefor, * * * shall be absolutely null and void * * *" unless made in circumstances plainly not to be found here. Petitioners' discussion of what may or may not be permissible under the law of Florida is beside the point since the Rules of Decision Act, 28 U.S.C. 1652 (Pet. App. A.52), on which they rely, explicitly renders state law inapplicable "where * * * Acts of Congress otherwise require or provide * * *." Thus, regardless of the effect Florida law gives to contingent fee contracts, the Anti-assignment Act controls insofar as

the claim involves the United States and renders such an arrangement unenforceable.

The petition for a writ of certiorari should therefore be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

DECEMBER 1967.

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